

REMARKS

Claims 1-20 and 22-25 are currently pending in this application. Applicant has carefully reviewed the final Office Action and respectfully requests reconsideration of the claims in view of the remarks presented below.

Oath/Declaration

A substitute Declaration is submitted.

Double Patenting

Claims 1-20 and 22-25 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-9, 11, 13-20 and 23-25 of copending application serial no. 10/782,684. Applicant prefers to hold this matter in abeyance pending notification of allowable subject matter in the present application.

Claims Rejections Under 35 U.S.C. §102

Claims 1-6, 9, 10, 12-14 and 22-25 were rejected under §102(a,e) as being anticipated by U.S. Patent Publication 2003/0144595 (Lade).

Independent claim 1 recites an implantable medical device comprising a temporary memory and a long-term memory operative to record diagnostic data stored in the temporary memory. Independent apparatus claims 24 and 25 also relate to implantable medical devices that include a temporary memory and a long-term memory for recording diagnostic data stored in the temporary memory. Claim 23 relates to a method performed by an implantable medical device and involves recording data in a temporary memory and a long-term memory.

Lade discloses an implantable microprocessor 60 with a memory, into which physiological data are continuously stored, with the oldest data being overwritten by the newest data. See paragraph [0045]. If a trigger event occurs, data from the microprocessor memory is written into memory 94 where is it stored for subsequent

download to a device 102 that is external the implantable device. See paragraph [0049]. In the Office Action, the Lade memory 94 is considered to correspond to Applicant's temporary memory. The Office Action, however, fails to clearly identify what element of Lade corresponds to Applicant's long-term memory. The memory of microprocessor 60 cannot reasonably be considered Applicant's long-term memory because the Lade microprocessor memory does not receive data from the Lade memory 94 and thus cannot correspond to a long-term memory that records diagnostic data stored a temporary memory – as recited in Applicant's claims. The Lade external device 102, to which data from memory 94 is downloaded, also cannot reasonably be considered Applicant's long-term memory because it is an external memory – not a memory of an implantable device – as recited in Applicant's claims.

In view of the foregoing, Applicant submits that Lade fails to disclose the combinations of elements and features recited in independent claims 1, 23, 24 and 25. Accordingly, Applicant requests reconsideration of the §102 rejections of these claims and their respective dependent claims.

Claim Rejections Under 35 U.S.C. §103

Claims 7, 8 and 15-20 were rejected under 35 U.S.C. §103(a) as being unpatentable over Lade in view of Legal Precedent. Claim 11 was rejected under 35 U.S.C. §103(a) as being unpatentable over Lade in view of Official Notice.

In view of the foregoing analysis of independent claim1 in view of Lade, Applicant believes that the rejections under §103 are rendered moot as dependent claims 7, 8, 11 and 15-20 depend from allowable independent base claim 1.

CONCLUSION

Applicant has made an earnest and bona fide effort to clarify the issues before the Examiner and to place this case in condition for allowance. Therefore, allowance of Applicant's claims 1-20 and 22-25 is believed to be in order.

Respectfully submitted,

Date

3 Jan 2008

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